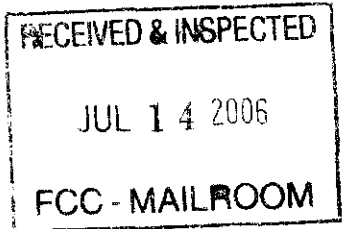


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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554



In re)
)
KANSAS CORPORATION COMMISSION)
)
Petition for Waiver of)
Sections 54.313 and 54.314)
of the Commission's Rules)

CC Docket No. 96-45

PETITION FOR WAIVER - EXPEDITED ACTION REQUESTED

The Kansas Corporation Commission ("KCC"), pursuant to Sections 1.3 and 1.925 of the Commission's Rules, 47 C.F.R. §§ 1.3, 1.925, hereby requests that the Commission grant a waiver of Sections 54.313 and 54.314 of the Commission's rules, 47 C.F.R. §§ 54.313, 54.314, and accept the KCC's late-filed initial Rural Use Certification applying to USCOC of Nebraska/Kansas, LLC d/b/a United States Cellular Corporation ("U.S. Cellular").¹ A grant of the requested waiver will enable U.S. Cellular to receive the associated categories of federal high-cost universal service support as of February 10, 2006, the date on which the KCC designated U.S. Cellular as an eligible telecommunications carrier ("ETC") for most of its service area² and as of March 30, 2006 for the Americus, Cedar Point and Saffordville wire centers in the Bluestem Telephone Company, Inc.'s service area.³

I. BACKGROUND

On November 4, 2005, U.S. Cellular filed an application ("Application") with the KCC

¹ No fee is required to be submitted with this request.

² *In the Matter of the Application of USCOC of Nebraska/Kansas LLC for Transfer of the Designation of GCC License Corporation as an Eligible Telecommunications Carrier*, Docket No. 06-USCZ-519-ETC, February 10, 2006, ("U.S. Cellular Order").

³ *In the Matter of the Application of USCOC of Nebraska/Kansas LLC for Transfer of the Designation of GCC License Corporation as an Eligible Telecommunications Carrier*, Docket No. 06-USCZ-519-ETC, March 30, 2006. ("US Cellular Reconsideration Order").

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seeking designation as an ETC for purposes of receiving federal high-cost universal service support.⁴ The company sought ETC status to ensure uninterrupted support in anticipation of its then-pending acquisition of the network of GCC License Corporation d/b/a Western Wireless (“Western Wireless”). Western Wireless had been receiving federal high-cost support in a substantial portion of its Kansas network, having been designated as an ETC by the KCC in specified non-rural areas on January 18, 2000, and in specified rural areas on October 12, 2001.

The categories of support available in the areas in which U.S. Cellular sought ETC status included high-cost loop support, local switching support, and safety net additive support, for which a Rural Use Certification must be filed by the state commission with the Universal Service Administrative Company (“USAC”) and the FCC. Accordingly, the Application included a request that the KCC file such a certification upon a grant of ETC status to enable U.S. Cellular to receive the associated categories of support without delay.⁵

Under the FCC’s rules, as amended by its *Report and Order* of March 17, 2005,⁶ the initial Rural Use Certification must be filed within 60 days of the effective date of the designation for the carrier to be able to receive the relevant categories of support as of the date of designation. However, because of an administrative oversight, the KCC’s certification pertaining to U.S. Cellular’s designation was not filed within the 60-day periods, which expired April 11 and May 29. The KCC filed the certification on June 5. Pursuant to the FCC’s rules, the certification will only entitle U.S. Cellular to the associated categories of support starting in

⁴ In the Matter of the Application of USCOC of Nebraska/Kansas LLC for Transfer of the Designation of GCC License Corporation as an Eligible Telecommunications Carrier, Docket No. 06-USCZ-519-ETC.

⁵ See Application at p. 9.

⁶ *Federal-State Joint Board on Universal Service, Report and Order*, 20 FCC Rcd 6371 (2005) (“*FCC ETC Order*”).

⁶ 47 C.F.R. §§ 54.313(d)(3)(iv), 54.314(d)(4).

the fourth quarter of 2006.⁷ Thus, without a grant of this Petition, the state of Kansas will forgo high-cost loop support, local switching support, and safety net additive support for U.S. Cellular's provision of universal service between February 10 and March 30, 2006 respectively and October 1, 2006.³

The FCC Rules Sections involved in this request for waiver provide, in pertinent part:

Section 54.313(d)(3)(vi): *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support pursuant to § 54.309 or § 54.311, whichever is applicable, as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that . . . the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d).

Section 54.314(d)(6): *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support pursuant to §§54.301, 54.305, or 54.307 or part 36 subpart F of this chapter, whichever is applicable, as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that . . . the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d).

II. ARGUMENT

The Commission has authority to waive its rules whenever there is "good cause" to do so. 47 C.F.R. § 1.3. Additionally, Section 1.925(b)(3) of the FCC's rules provides for a waiver where it is demonstrated that:

- (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

Federal courts have held that the Commission may exercise its discretion to waive a rule where, *inter alia*, particular facts would make strict compliance inconsistent with the public interest. WAIT Radio v. FCC, 418 F. 2d 1153, 1159 (D.C. Cir. 1969) (“WAIT Radio”). As further explained in WAIT Radio, the Commission is charged with administration of its responsibilities consistent with the “public interest.” That an agency may discharge its responsibilities by promulgating rules of general application which, in the overall perspective, establish the “public interest” for a broad range of situations, does not relieve it of an obligation to seek out the “public interest” in particular, individualized cases. In fact, the Commission’s right to waive its rules is not unlike an obligation in that it is a sine quo non-to its ability to promulgate otherwise rigid rules. It is the necessary “safety valve” that makes the system work. See WAIT Radio at 1157, 1159.

In this case, there is good cause for a waiver of the certification deadlines at issue. Strict enforcement of the 60-day window for filing initial Rural Use Certifications in this case would not serve the public interest because the result would be a loss of substantial high-cost support over a nearly eight-month period. Because U.S. Cellular serves sparsely populated areas in Kansas, high-cost support is critically important to the company’s operations. Such support will assist U.S. Cellular in providing a quality universal service offering to and underserved rural communities.

Moreover, the underlying purpose of the rule would be not be served by its strict enforcement in this case. The purpose of the Rural Use Certification rules is to ensure that ETCs

will use federal high-cost support in the manner intended by federal law. The KCC “has made the necessary certification, albeit untimely.”⁸ Granting the requested waiver and treating the certification as timely filed would in no way diminish the force of the certification. A denial of the requested waiver, on the other hand, would prevent U.S. Cellular from receiving any of the relevant categories of support during its first three calendar quarters as an ETC – thus precluding the use of such support for any purpose during that time.

Additionally, there are unique circumstances in this case that would render strict enforcement of the certification rules inequitable, unduly burdensome, and contrary to the public interest. The prior owner of the network, Western Wireless, had been receiving significant federal high-cost support prior to its acquisition by U.S. Cellular. The KCC treated U.S. Cellular’s Application for ETC status on an expedited basis to ensure that federal high-cost support would continue to those areas with minimal or no interruption. It would be extreme and inequitable to penalize U.S. Cellular, as well as consumers in rural Kansas who will otherwise benefit from network improvements made with high-cost support, by cutting off high cost loop, local switching, and safety net additive support for nearly three calendar quarters.

We note that uninterrupted support is crucial for U.S. Cellular to continue to meet its obligations as an ETC in Kansas. As part of the conditions of its designation, U.S. Cellular has made several commitments to the KCC in accordance with federal and state ETC laws and policies. These include commitments to provide service to consumers upon reasonable request throughout its service area and to provide detailed reports to the KCC, including coverage maps,

⁸ *Federal-State Joint Board on Universal Service, West Virginia Public Service Commission, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-rural Carriers*, 16 FCC Rcd 5784, 5787 (2001) (“*West Virginia PSC Waiver Order*”).

demonstrating how the company has used high-cost support as required by law.⁹ By December 31, 2006, the company will be required to provide the KCC with updated coverage maps and supporting materials showing its progress in improving and expanding coverage. U.S. Cellular has already made several compliance filings and has worked with staff on developing Lifeline advertising materials and other issues. Given that U.S. Cellular has taken on the obligations of an ETC as of February 10 and March 30, 2006, it would be unfair to strictly apply a rule that would force the company and its subscribers to forgo several months of funding. No other party will be prejudiced by a grant of this waiver request and consumers in rural Kansas would be harmed by its denial.

The Commission has previously concluded that strict application of the filing deadlines set forth in Sections 54.313 and 54.314 is inconsistent with the public interest and undermines the Commission's goals of competitive neutrality.¹⁰ In granting similar waiver requests made by state commissions, the Commission has acknowledged that strict application of the certification filing schedule may have the effect of penalizing ETCs. For example, the Commission granted a similar request by the West Virginia Public Service Commission ("WVPSC") for waiver of Section 54.314(d) where the WVPSC had inadvertently missed the certification deadline. In that case, the Commission noted the "potential harm caused by the loss of one quarter of annual federal high-cost support[.]"¹¹ Here, the harm would be even greater because U.S. Cellular

⁹ *U.S. Cellular Order, supra*, at para. 50.

¹⁰ In granting similar requests for waiver of high-cost filing deadlines, the FCC has previously concluded that "competitively neutral access to support is critical to ensuring that all Americans have access to affordable telecommunications." *Federal-State Joint Board on Universal Service, Centennial Cellular Tri-State Operating Partnership, Centennial Claiborne Cellular Corp., Petition for Waiver of Section 54.313(d) of the Commission's Rules and Regulations*, 19 FCC Rcd 15587, 15591 (2004), citing, *Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd 20432, 20479-80 (1999) (subsequent hist. omitted).

¹¹ *West Virginia PSC Waiver Order, supra*, 16 FCC Rcd at 5786. See also *Federal-State Joint Board on*

would lose nearly three quarters of support.

Finally, denial of support that would result from strict application of Sections 54.313 and 54.314 would be inconsistent with the Commission's goal of competitive neutrality, which the Commission has stressed as a "fundamental principle of the Commission's universal service policies."¹² For newly designated ETCs, prompt commencement of high-cost support is crucial for constructing and upgrading networks to attain a level of service that provides consumers in high-cost areas with a viable alternative to wireline incumbent LEC service. Since the majority of newly designated ETCs are competitive carriers, strict enforcement of Sections 54.313 and 54.314 would unfairly handicap new entrants, including carriers offering services using new technologies.

As with other waiver requests by state commissions granted by the FCC, the late filing at issue here was made inadvertently.¹³ This oversight was highly unusual for the KCC, which routinely submits universal service certifications and other filings to USAC and the FCC on a timely basis. The KCC regrets the error and will take steps to ensure that all future certification filings are made in accordance with applicable deadlines.

III. REQUEST FOR EXPEDITED TREATMENT

The KCC respectfully requests expedited action for this waiver request. Consumers in U.S. Cellular's ETC service area should not be deprived of substantial universal service support as a result of an administrative oversight by the KCC. Denying nearly eight months of support to

Universal Service, Connecticut Department of Public Utility Control, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Rural Carriers, 17 FCC Rcd 24804 (2002) ("Connecticut DPUC Waiver Order").

¹² *Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, 18 FCC Rcd 7138, 7141 (2003).

¹³ See *West Virginia PSC Waiver Order, supra*; *Connecticut DPUC Waiver Order, supra*.

U.S. Cellular under these circumstances is contrary to the statutory goal of promoting the availability of universal service to consumers in high-cost areas. In these circumstances, not only is a waiver of the Commission's rules fully justified, it is also critically important that the waiver be granted on an expedited basis so that U.S. Cellular may immediately invest support in the provision, maintenance, and upgrading of services and facilities in accordance with the Act's purposes.

IV. CONCLUSION

The KCC respectfully requests the Commission to grant the requested relief so that U.S. Cellular can immediately invest support into rural Kansas in accordance with its obligations as an ETC.

Respectfully submitted,

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

A handwritten signature in cursive script, reading "Eva Powers", is written over a horizontal line.

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